

PATENT  
Attorney Docket No. 09605.0045-00

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

## **APPLICATION FOR PATENT TERM ADJUSTMENT–POST GRANT**

In accordance with 37 C.F.R. § 1.705(b), Applicant hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 584 days. This application is being filed within two months of issuance of the above patent, as required by 37 C.F.R. § 1.705(d).

## I. Statement of the Facts Involved

#### A. Correct Patent Term Adjustment

According to information printed on the face of the above-identified issued patent,  
this patent is entitled to 387 days of patent term adjustment.

Applicant has calculated a patent term adjustment of 580 days based on the following facts:

Customer No. 22,852  
U.S. Patent No. 7,488,735 B2  
Attorney Docket No. 09605.0045-00

The application was filed on August 1, 2005. A Restriction Requirement dated November 21, 2007, was the first Office Action on the application, creating a U.S. Patent and Trademark Office (PTO) delay of 416 days.

A response to the November 21, 2007, Restriction Requirement was filed on December 21, 2007. A subsequent non-final Office Action was mailed on February 28, 2008. A response to the February 28, 2008, Office Action was filed on June 26, 2008, creating an Applicant delay of 29 days.

The application was allowed on October 2, 2008, and the issue fee was paid on January 5, 2009. The patent issued on February 10, 2009, creating a PTO delay of 4 days.

The three year pendency date for the determination of patent term adjustment ("PTA") is August 1, 2008. The patent issued on February 10, 2009, creating a PTO delay of 193 days.

Because only the four day PTO delay in issuing the patent occurred after the three year pendency, Applicant is entitled to patent term adjustment for all other delays. Accordingly, in view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, the total adjustment based on PTO delay is 609 days (i.e., 416 days plus 193 days) and the reductions in term adjustment is 29 days, resulting in a patent term adjustment of 580 days total. Applicant respectfully requests that the current patent term adjustment be reconsidered.

#### **B. Terminal Disclaimer**

The above-identified application is not subject to a Terminal Disclaimer.

**C. Reasonable Efforts**

Aside from the fact described above, there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704.

**II. Fee**

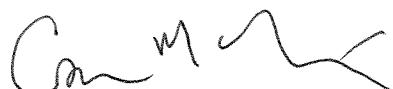
As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by a check for \$200.00 to cover the required fee. Please charge any deficiencies to Deposit Account No. 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: March 24, 2009

By:



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